



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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MEMORANDUM

TO: **VICTORIA P. SIMMONS**
Regulatory Coordinator
Department of Medical Assistance Services

FROM: **PAIGE S. FITZGERALD**
Special Counsel to DMAS

DATE: **August 22, 2003**

SUBJECT: Proposed Regulations concerning Methods and Standards for Establishing Payment Rates:
Other Types of Care: Hospital Outpatient Reimbursement and Rehab Agencies
Reimbursement: Limit Outpatient Hospital Payment to 80% of Allowable Cost;
Establish Prospective Reimbursement for Rehab Agencies

I am in receipt of the attached proposed regulations that set out criteria limiting outpatient hospital payment to 80% of allowable cost and establishing a prospective reimbursement system for rehabilitation agencies. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services has the legal authority to promulgate the attached proposed regulations and to identify any federal or state mandates regarding this regulation.

Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. These regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to make permanent the regulations concerning the adjustments to outpatient hospital rates and the new prospective reimbursement system for rehabilitation agencies. These changes were originally made by the promulgation of emergency regulations, and were approved by

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this Office in a memorandum dated May 2, 2003.

The authority for both the previously promulgated emergency regulations and these proposed regulations derives from this year's Appropriation Act (Chapter 1042 of the 2003 Acts of Assembly, Items 325KKK & NNN. Item 325 KKK states that "[t]he Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to reduce reimbursement for outpatient hospital services to 80 percent of allowable Medicaid cost, with the exception of direct graduate medical education for interns and residents and Type One hospitals." In addition, Item 325 NNN requires that "[t]he Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to revise the payment methodology for rehabilitation agencies from a retrospective reasonable cost basis to a prospective methodology based on establishing a ceiling at 112 percent of the weighted median cost of all rehabilitation agencies, with the exception of any rehabilitation agencies operated by Community Services Boards."

If you have any questions or need any additional information, please feel free to call me at 786-3450.

cc: Siran S. Faulders, Esquire

Attachment